REMARKS

Applicants thank the Examiner for his careful and thoughtful examination of the present Application. By way of summary, Claims 14, 22, and 38 will have been amended, and Claims 14-54 are currently pending. In response to the Office Action mailed August 24, 2007, the Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following remarks.

Traversal of Rejection under 35 U.S.C. § 103(a)

In the August 24, 2007 Office Action, Claims 14-21, 30, 31, 34, 35 and 38-52 stand rejected under § 103(a) as being unpatentable over U.S. Patent No. 6,769,767, issued to Swab et al. in view of U.S. Patent No. 5,654,786, issued to Bylander (hereinafter "Swab in view of Bylander"). While Applicants reserve the right to prosecute these claims as originally filed, Applicants have amended Claims 14 and 38 in order to expedite prosecution of this Application. Applicants respectfully traverse this rejection and submit that neither Swab nor Bylander disclose each and every feature recited in Claims 14-21, 30, 31, 34, 35 and 38-52.

The Examiner has already acknowledged that although Swab teaches eyewear with a transceiver for forming ad hoc networks, it **nothing in Swab teaches or suggests any devices related to light attenuation**. Although Bylander teaches a variable light attenuation system for eyewear that uses electronically controllable dyes to change the magnitude of the light attenuation, **nothing in Bylander teaches or suggests that such a system should or could be combined with eyewear that has other electronic systems**. Nevertheless, what Swab and Bylander do teach is the following:

1. Swab teaches that the eyewear should be low-cost. Swab, at col. 1, lines 63-64.
2. Swab teaches that the eyewear should be small in size. *Id.*
3. Bylander teaches that the size should be minimized. Bylander, col. 8, lines 15-18 (indicating that "The disadvantage of this circuit is that transformer 224 is quite large, whereas inductor 182 of FIG. 7 is comparatively small, on the order of 0.1 inches in diameter.").
4. Swab teaches that the eyewear should have low power consumption. Swab, at col. 1, lines 63-64.

5. Bylander indicates that its system requires a low or high voltage power supply. Bylander, Abstract.

The Examiner's proposed combination is improper and disregards the clear teaching away provided in these references. First, Swab expressly teaches that the eyewear should be ***low-cost***. However, by combining additional electronic, optical, and control equipment to the eyewear, the cost will only increase.

Secondly, Swab expressly teaches that the eyewear should be ***small in size***. However, the size of the Swab eyewear will increase by adding all of Bylander's components; additional light sensors, filaments, a high voltage power supply, ferro-electric materials, a comparator circuit, an op amp, photo diodes, polarizers, a control circuit, resistors, transistors, capcitors, transformer circuits, feedback capacitors, as required by the Bylander system.

Finally, Swab expressly teaches that the eyewear should have ***low power consumption***. It is clear that by adding the electrical, optical, and control components that will all draw power, the power consumption will only increase. For at least these reasons, and as emphasized by the Swab and Bylander references themselves, one of skill in the art would not combine the Swab and Bylander references.

The Examiner's statements in the Office Action regarding the necessary showing for obviousness are correct: "obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art." Office Action, pages 4-5. However, **the Office Action fails to apply this standard** and only responds by indicating that "Bylander would have been recognized as an art pertinent in the art of Swab et al." Office Action, page 5. Indeed, assuming arguendo that eyewear having lenses with light attenuation is pertinent art to eyewear having audio capabilities, the Office Action does not provide a reason for combining Swab and Bylander—perhaps more importantly, the Office Action does not provide any reason whatsoever why the explicit teachings of Swab and Bylander can be disregarded to make the combination.

Furthermore, as required to establish a *prima facie* case of obviousness, the Office Action does not include an indicated reasonable expectation of success. M.P.E.P. § 2143. There is no

evidence that one would be able to successfully combine the cited references in that both references describe eyewear having apparatus, including circuitry, housed (or co-molded) in both ear pieces (or temples) of eyewear. It is not clear that one of skill in the art would be able to combine and fit the several components of Swab, et al. and Bylander into the ear pieces (or temples) of eyewear, as claimed.

Therefore, Applicants submit that the combination of Swab and Bylander is improper and, for at least the above reasons, the rejection of Claims 14-21, 30, 31, 34, 35 and 38-52 should be withdrawn.

Further, Claims 14-54 stand rejected under § 103(a) as being unpatentable over Swab in view of U.S. Patent No. 4,149,780, issued to Young (hereinafter "Swab in view of Young"). Applicants respectfully traverse this rejection and submit that neither Swab nor Young disclose each and every feature recited in Claims 14-54. While Applicants reserve the right to prosecute Claims 14-54 as originally filed, Applicants have amended Claims 14, 22 and 38 in order to expedite prosecution of this Application. Accordingly, Applicants request that this rejection be withdrawn because neither Swab nor Young disclose each and every feature recited in Claims 14-54.

Claim 14 now recites an eyeglass comprising, *inter alia*, "at least one lens configured to have electronic variable light attenuation supported by the frame" (emphasis added). Claim 22 now recites, *inter alia*, a speaker support that "is configured to allow the speaker to be pivoted over a predetermined distance with respect to the frame to rigidly position the speaker adjacent the user's ear when worn by the user" (emphasis added). Finally, Claim 38 now recites, *inter alia*, first and second speaker supports "configured to allow the first speaker to be pivoted over a predetermined distance with respect to the frame to rigidly position the first speaker adjacent to a first ear of the user and the second speaker to be pivoted over a predetermined distance with respect to the frame to rigidly position the second speaker adjacent to a second ear of the user when worn by the user" (emphasis added). Applicants respectfully submit that neither Swab nor Young individually or in combination teach at least the features of Claims 14, 22, and 38 noted above.

In contrast, Young only teaches spectacles with lenses that can be rotated to provide light attenuation. Young is entirely devoid of any teaching or disclosure of a lens "configured to have

electronic variable light attenuation supported by the frame," as recited in Claim 14. Further, Swab fails to disclose at least that the speaker support allows the speaker to "be pivoted over a predetermined distance with respect to the frame [and] to rigidly position the speaker," as similarly recited in Claims 22 and 38. Swab teaches that the speakers can either be removably mounted on the temples or when removed, the speakers are only "connected" to the eyeglasses via flexible conductive wires. *See* Swab, col. 6, lines 18-44 and Figures 9-10. The Swab eyewear does not allow the speaker "to be pivoted over a predetermined distance with respect to the frame to rigidly position the speaker," as recited in Claim 22 and similarly recited in Claim 38.

Therefore, because none of Swab and Young fail to teach at least the above-mentioned features of Claims 14, 22, and 38, these references do not teach each and every feature recited in the claims. Thus, Applicants respectfully submit that the Examiner's rejections under Section 103(a) based on the combinations of Swab in view Bylander and Swab in view of Young are improper and should be withdrawn.

No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Co-Pending Applications of Assignee

Applicant wishes to draw the Examiner's attention to the following co-pending applications of the present application's assignee.

Serial No.	Title	Filed	Attorney Docket No.
10/628,695	WIRELESS INTERACTIVE HEADSET	28 July 2003	NOCODE2.005A
10/963,290	ACTUATOR CONFIGURATION FOR EYEGLASS WITH MP3 PLAYER	12 Oct 2004	NOCODE2.5C1DV2
11/417,854	ELECTRONIC EYEWEAR WITH HANDS-FREE OPERATION	3 May 2006	NOCODE2.5C3DV1
11/022,367	DATA INPUT MANAGEMENT SYSTEM FOR WEARABLE ELECTRONICALLY ENABLED INTERFACE	22 Dec 2004	NOCODE2.007A
11/418,160	EYEGLASS WITH MP3 PLAYER	3 May 2006	OAKLY1.172C3
11/352,938	EYEWEAR WITH DETACHABLE MODULE	13 Feb 2006	OAKLY1.271A
11/418,154	EYEGLASSES WITH WIRELESS COMMUNICATION FEATURES	3 May 2006	OAKLY1.278C2

CONCLUSION

Applicants respectfully submit that the above rejections and objections have been overcome and that the present Application is now in condition for allowance. Therefore, Applicants respectfully request that the Examiner indicate that Claims 14-54 are now acceptable and that Claims 14-54 are allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present Application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicants also have not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements

noted above, and Applicants reserve the right to later contest whether a proper motivation and suggestion exists to combine these references.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: November 26, 2007

By:/Michael Guiliana/
Michael A. Guiliana
Registration No. 42,611
Attorney of Record
Customer No. 20995
(949) 760-0404

4551745
112607